



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: LIN-96-072-51189 Office: Nebraska Service Center

Date:

AUG 15 2000

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

Public Copy

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invasion of personal privacy

INSTRUCTIONS:

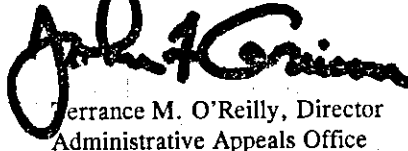
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was initially approved by the Director, Nebraska Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, on February 18, 1999, the director revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The appeal was properly filed on March 10, 1999, 20 days after the decision was rendered. 8 C.F.R. 205.2(d) states that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. It is noted that the notice of revocation erroneously stated that the petitioner could file an appeal within 33 days. Nevertheless, the director's error does not supersede the pertinent regulations.

8 C.F.R. 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2), or the requirements of a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided at the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. 103.5(a)(3) requires that a motion for reconsideration state the reasons for reconsideration and be supported by any pertinent precedent decisions. A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On appeal, counsel argued that the evidence submitted in support of the petition was sufficient to establish the beneficiary's eligibility for the benefit sought. Counsel submitted photocopies of previously-submitted documents.

The arguments made on appeal, and the supporting documentation submitted with the appeal, do not contain precedent decisions to show that the director's decision was based on an incorrect application of law or Service policy. Further, the appeal does not establish that the director's decision was incorrect based on the evidence of record at the time of her decision.

The appeal was untimely filed and does not meet the requirements of a motion to reopen or the requirements of a motion to reconsider. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.